

comprising an emulsifier component. In claim 1, the emulsifier component has a melting point from about 60 to about 90°C and a hydrophilic lipophilic balance (HLB) value from about 2 to 10. In claim 2, the emulsifier has a melting point from about 50 to about 90°C, a HLB value of 2 to 10, and is in an amount of about 2.2 to 6 percent by weight of the confectionery product. Claim 3 is directed to a chocolate composition having a melting point from about 50 to about 90°C, a HLB value of 2 to 10, and an emulsifier of at least one of a diacetyltartaric acid ester of monoglycerides, mono- and diglycerides of vegetable oils, partially hydrogenated monoglycerides, fully hydrogenated or monoglycerides.

Herzing is directed to a confectionary coatings containing polyglycerol ester emulsifiers (PGPRs) for the purpose of improving gloss of the compound coatings having melting points between 52 and 57°C and HLB values between 7.2 and 13 and in a concentration of 1 or 2 percent by weight of the confectionery product.

Applicants' invention as claimed in claim 1 requires that the emulsifier component have a melting point from about 60 to about 90°C, which is in contrast to Herzing disclosing an emulsifier component having a melting point from 52 to 57°C. Furthermore, Applicants' invention as claimed in claim 2 requires that the emulsifier component be in an amount of about 2.2 to 6 percent by weight of confectionery product, in contrast to Herzing which discloses the use of 1 or 2 percent by weight. Finally, Applicants' invention as presently claimed in claim 3 requires that the chocolate composition comprise at least of a diacetyltartaric acid ester of monoglycerides, mono- and diglycerides of vegetable oils, partially hydrogenated monoglycerides, fully hydrogenated or monoglycerides, whereas Herzing discloses the use of polyglycerol esters (tri- and octaglycerides) only. Furthermore, Herzing has no disclosure or teaching to utilize higher melting point materials, greater amount of the emulsifier, or the specific emulsifier materials recited, nor would one of ordinary skill in the art be motivated to utilize any of these features in a chocolate composition.

Because Herzing does not teach all of the elements of Applicants' invention as claimed in independent claims 1, 2, or 3, and for the reasons set forth above regarding the lack of motivation of a skilled artisan to obtain the presently claimed features, the 35 U.S.C. 102(b) rejection should be withdrawn.

Claims 1-4 and 7 were rejected under 35 U.S.C. §§ 102(b) as being anticipated by Player (4,524,026) for the reasons set forth on page 2 of the Office Action.

Player is directed to a hard butter composition for coatings that retains a glossy appearance, some having a chocolate flavor, containing polyglycerol esters. The emulsifiers disclosed by Player include a triglycerol mono-stearate (a polyglycerol ester). Furthermore, Player discloses polyglycerol esters that have an HLB value of 7.2 and melting point of 52-55°C.

Applicants' invention as claimed in claim 1 requires that the emulsifier component have a melting point from about 60 to about 90°C, which is in contrast to Player disclosing an emulsifier component having a melting point from 52 to 55°C. Furthermore, Applicants' invention as claimed in claim 2 requires that the emulsifier component be in an amount of about 2.2 to 6 percent by weight of confectionery product, in contrast to Player does not disclose a percent by weight of emulsifier based on confectionery product. Finally, Applicants' invention as presently claimed in claim 3 requires that the chocolate composition comprise at least one of a diacetyltartaric acid ester of monoglycerides, mono- and diglycerides of vegetable oils, partially hydrogenated monoglycerides, fully hydrogenated or monoglycerides, whereas Player discloses the use of polyglycerol esters (triglycerides). Like Herzing, Player has no disclosure or teaching to utilize higher melting point materials, greater amount of the emulsifier, or the specific emulsifier materials recited, nor would one of ordinary skill in the art be motivated to utilize any of these features in a chocolate composition.

Because Player does not teach all of the elements of Applicants' invention as claimed in independent claims 1, 2, or 3, and for the reasons set forth above regarding the lack of motivation of a skilled artisan to obtain the presently claimed features, Applicants respectfully request that the 35 U.S.C. 102(b) rejection be withdrawn.

Claims 1 and 3 are rejected under 35 U.S.C. §§ 102(b) as being anticipated by Krawczyk (5,505,982) for the reasons set forth on page 2 of the Office Action.

Krawczyk is directed to a reduced calorie confection using a cellulose surfactant. The cellulose surfactant taught by Krawczyk comprises microcrystalline cellulose/sorbitan monostearate composite.

First of all, Applicants' chocolate composition does not consist of a cellulose composite. Furthermore, Applicants' invention as claimed in claim 1 requires that the emulsifier component have a melting point from about 60 to about 90°C. Krawczyk teaches the melting point of the cellulose surfactant mixture is about 71°C, but he does not state what

the melting point of the emulsifier component is. Presumably, the melting point of Krawczyk's emulsifier is lower, since it is the overall mixture that must be heated to 71°C. This is different than the Applicants' invention that is based on the melting point of the emulsifier only. Finally, Applicants' invention as presently claimed in claim 3 requires that the chocolate composition comprise at least of a diacetyltartaric acid ester of monoglycerides, mono- and diglycerides of vegetable oils, partially hydrogenated monoglycerides, fully hydrogenated or monoglycerides, whereas Krawczyk discloses the use of cellulose composite and makes no mention of the specific emulsifiers mentioned in claim 3.

Because Krawczyk does not teach all of the elements of Applicants' invention as claimed in independent claims 1 or 3, Applicants' respectfully request that the 35 U.S.C. 102(b) rejection be withdrawn.

Claims 13, 14 and 19 are rejected under 35 U.S.C. §§ 102(b) as being anticipated by or in the alternative under 35 U.S.C. §§ 102(b) as obvious over Varvil (4,335,157) in view of Gunstone at page 229, for the reasons set forth on page 2 of the Office Action.

Applicants' invention as presently claimed in claim 13 is directed to a food product comprising a liquid oil and an emulsifier component having a melting point from about 50 to 90°C and a hydrophilic lipophilic balance value of about 2 to 10, wherein the liquid oil is present in an amount of about 10 to 60 weight percent of the food product and the emulsifier is present in an amount of about 0.5 to 15 weight percent of the liquid oil. Claim 13 recites the features of previous claim 18, which was not rejected over these references and was instead objected to by the Examiner because it was dependent upon a rejected claim. Presently amend claim 13 is now claim 18 written in independent form and is patentable. Claims 14 and 19 are among those claims that are dependent on claim 13 and are thus also in patentable form.

Neither Varvil or Gunstone together or alone disclose or suggest a food product, wherein the liquid oil is present in an amount of about 10 to 60 weight percent of the food product and the emulsifier is present in an amount of about 0.5 to 15 weight percent of the liquid oil.

In view of the comments above, Applicants' respectfully request that the rejections be removed and that the claims be promptly allowed.

Claims 5, 6, 8 and 15-18 were objected to as being dependent upon a rejected claim, but allowable if rewritten in independent form because "none of the references show a

chocolate product or an oil having the particular properties that are set forth in the claims." Claim 13 has been rewritten to include the limitations of claim 18 and claims 15-17 and 19 are dependent on 13. Furthermore, Claims 5-8 are dependent on newly amended claim 1. As applicants believe that claim 1 is patentable, there is no need to rewrite claims 5-8 in independent form at this time.

In view of the comments and amendments above the claims are in form for allowance. Applicants respectfully request their allowance.

Applicant respectfully requests that the foregoing remarks be entered and made of record in the file history of the instant application. If any issues remain in connection herewith, Applicant kindly request that the Examiner telephone the undersigned.

Attached hereto is a fee transmittal sheet for the new and amended claims. Applicant does not believe any additional fees are due here with; should any additional fees be due, however, please charge such fees to Winston & Strawn Deposit Account No. 501-814.

Date: 6/27/02

Respectfully submitted,


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Enclosure

APPENDIX A
PRESENTLY PENDING CLAIMS

1. (Amended) A chocolate composition comprising an emulsifier component having a melting point from about 60 to 90°C and a hydrophilic lipophilic balance value from about 2 to 10.

2. (Amended) A chocolate composition comprising an emulsifier component having a melting point from about 50 to 90°C and a hydrophilic lipophilic balance value from about 2 to 10, wherein the emulsifier component is present in an amount of about 2.2 to 6 percent by weight of the confectionery product

3. (Amended) A chocolate composition comprising an emulsifier component having a melting point from about 50 to 90°C and a hydrophilic lipophilic balance value from about 2 to 10, wherein the emulsifier component comprises at least one of a diacetyltartaric acid ester of monoglycerides, mono- and diglycerides of vegetable oils, partially hydrogenated monoglycerides, fully hydrogenated or monoglycerides.

4. (Amended) The chocolate composition of claim 3, wherein the emulsifier component is a monoglyceride having a carbon side chain of at least 16 carbons.

5. The chocolate composition of claim 4, wherein the emulsifier component comprises a monoglyceride having a carbon side chain at least 20 carbons long.

6. The chocolate composition of claim 1, wherein the emulsifier component comprises a monoglyceride having a melting point of about 67°C obtained by distilling partially hydrolyzed vegetable oil.

7. The chocolate composition of claim 1, wherein the chocolate composition substantially maintains its structure up to a temperature of at least about 36°C.

8. The chocolate composition of claim 1, wherein the chocolate composition

substantially maintains its structure up to a temperature of at least about 45°C.

9. A method of manufacturing a chocolate composition that maintains its structure at elevated temperatures comprising:

combining the ingredients to make a chocolate;

adding to the chocolate an emulsifier component having a melting point from about 50° to 90°C and hydrophilic lipophilic balance value of about 2 to 10;

mixing the chocolate and emulsifier component to sufficiently distribute the emulsifier component throughout the chocolate and provide a chocolate composition that is a mixture of chocolate and emulsifier component;

warming the chocolate composition to a temperature sufficient to inhibit or prevent the emulsifier component from crystallizing; and

allowing the mixture to cool and set to form a stable chocolate composition.

10. The method of claim 9, further comprising depositing the mixture into a mold at a temperature sufficient to prevent the emulsifier component from crystallizing, and removing the mixture from the mold after the mixture cools.

11. The method of claim 9, wherein the emulsifier component is added in an amount from about 1 to 6 percent by weight of the chocolate composition.

12. The method of claim 9, wherein the mixing uniformly distributes the emulsifier component throughout the chocolate.

13. (Amended) A food product comprising a liquid oil and an emulsifier component having a melting point from about 50 to 90°C and a hydrophilic lipophilic balance value of about 2 to 10, wherein the liquid oil is present in an amount of about 10 to 60 weight percent of the food product and the emulsifier is present in an amount of about 0.5 to 15 weight percent of the liquid oil.

14. The food product of claim 13, wherein the liquid oil comprises palm oil, palm kernel oil, coconut oil, cocoa butter, babassu oil, milk fat, soybean oil, corn oil, canola oil,

rapeseed oil, sesame oil, sunflower oil, safflower oil, peanut oil, oils resulting from the fractionation or hydrogenation thereof, and mixtures thereof.

15. The product of claim 13, wherein the ratio of liquid oil to emulsifier component is about 10:2

16. The food product of claim 13, wherein the emulsifier component comprises at least one of a diacetyltartaric acid ester of a monoglyceride, sorbitan ester, mono- or diglycerides of a vegetable oil, a partially hydrogenated monoglyceride, a fully hydrogenated monoglyceride, or sugar ester.

17. (Amended) The food product of claim 16, wherein the emulsifier component comprises a monoglyceride having a carbon side chain of at least 16 carbons.

18. (Cancelled)

19. The food product of claim 13, wherein the food product comprises at least one of a creamer, dough, bouillon base, confectionery coating or center, or ice cream.

20. (New) The chocolate composition of claim 1, wherein the emulsifier component is present in an amount of about 1 to 6 percent by weight of the confectionery product.

21. (New) The chocolate composition of claim 1, wherein the emulsifier component comprises at least one of a diacetyltartaric acid ester of monoglycerides, sorbitan esters, mono- and diglycerides of vegetable oils, partially hydrogenated monoglycerides, fully hydrogenated monoglycerides, or sugar esters.

22. (New) The chocolate composition of claim 2, wherein the emulsifier component is present in an amount of about 1 to 6 percent by weight of the confectionery product.

23. (New) The chocolate composition of claim 2, wherein the emulsifier component comprises at least one of a diacetyltartaric acid ester of monoglycerides, sorbitan esters,

mono- and diglycerides of vegetable oils, partially hydrogenated monoglycerides, fully hydrogenated monoglycerides, or sugar esters.

24. (New) The chocolate composition of claim 3, wherein the emulsifier component is present in an amount of about 1 to 6 percent by weight of the confectionery product.

25. (New) The chocolate composition of claim 3, wherein the emulsifier component comprises at least one of a diacetyltartaric acid ester of monoglycerides, sorbitan esters, mono- and diglycerides of vegetable oils, partially hydrogenated monoglycerides, fully hydrogenated monoglycerides, or sugar esters.

26. (New) The chocolate composition of claim 9, wherein the emulsifier component comprises at least one of a diacetyltartaric acid ester of monoglycerides, sorbitan esters, mono- and diglycerides of vegetable oils, partially hydrogenated monoglycerides, fully hydrogenated monoglycerides, or sugar esters.

APPENDIX B
Marked Copy of Amended Claims

1. (Amended) A chocolate composition comprising an emulsifier component having a melting point from about [50] 60 to 90°C and a hydrophilic lipophilic balance value from about 2 to 10.

2. (Amended) [The chocolate composition of claim 1] A chocolate composition comprising an emulsifier component having a melting point from about 50 to 90°C and a hydrophilic lipophilic balance value from about 2 to 10, wherein the emulsifier component is present in an amount of about [1] 2.2 to 6 percent by weight of the confectionery product

3. (Amended) [The chocolate composition of claim 1,] A chocolate composition comprising an emulsifier component having a melting point from about 50 to 90°C and a hydrophilic lipophilic balance value from about 2 to 10, wherein the emulsifier component comprises at least one of a diacetyltartaric acid ester of monoglycerides, [sorbitan esters,] mono- and diglycerides of vegetable oils, partially hydrogenated monoglycerides, fully hydrogenated or monoglycerides [, or sugar esters].

4. (Amended) The chocolate composition of claim 3, wherein the emulsifier component is a monoglyceride having a carbon side chain of at least [18] 16 carbons.

13. (Amended) A food product comprising a liquid oil and an emulsifier component having a melting point from about 50 to 90°C and a hydrophilic lipophilic balance value of about 2 to 10, wherein the liquid oil is present in an amount of about 10 to 60 weight percent of the food product and the emulsifier is present in an amount of about 0.5 to 15 weight percent of the liquid oil.

17. (Amended) The food product of claim 16, wherein the emulsifier component comprises a monoglyceride having a carbon side chain of at least [18] 16 carbons.